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OFFICE OF PETITIONS

In re Patent No. 7,314,619 : DECISION ON REQUEST FOR
Adams et al. : RECONSIDERATION OF
Issue Date: January 23, 2002 : PATENT TERM ADJUSTMENT AND
Application No. 10/052,798 : NOTICE OF INTENT TO ISSUE
Filed: November 2, 2001 : CERTIFICATE OF CORRECTION
Attorney Docket No. P1101R2D1 :

This is a decision on the petition filed on February 17, 2009,¹ which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred twenty-two (822) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is GRANTED to the extent indicated herein. The term of the above-identified patent is extended or adjusted by five hundred thirty-seven (537) days.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(4) provides that the period of adjustment of the term of a patent

¹ This petition was timely filed within two months of the decision on the request for reconsideration of patent term adjustment mailed December 17, 2008.

shall not include the period equal to the sum of the period of pendency consumed by appellate review under 35 U.S.C. 134, 141, 145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)).

The Office agrees with patentee that the over three year period is 1155 days. However, patentee failed to account for the filing of the notice of appeal on September 16, 2005. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 285 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, September 16, 2005, and ending on the date of the mailing of the non-final Office action, September 27, 2006. Thus, the B delay is 870 days (1155 - 285). Accordingly, the patent term adjustment is 537 days (81 days of A delay + 870 days of B delay - 414 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred thirty-seven (537) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell
Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,314,619 B2

DATED : Jan. 23, 2002

DRAFT

INVENTOR(S) : Adams et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 741 days

Delete the phrase "by 741 days" and insert - by 537 days--